

REMARKS

Claims 10 – 18 remain in the application which has been withdrawn from appeal and for which new grounds of rejection are made under Section 103 based on Eryurek (US 2003/0045962) in view of Sainen (U.S. 5,034,897) and Lewis (US 5,281,343). Applicants request reconsideration of the rejection of claim 10 over Eryurek in view of Sainen. That rejection is traversed for reasons similar to those argued against the rejection under Section 102 in the appeal brief of record. However, claim 10 is also amended to more clearly define that the determining step relates to process variables relevant to increasing capacity.

The new office action acknowledges that Eryurek “does not disclose the elements of the instant invention to the extent of the claimed limitations.” Yet the Eryurek reference is applied as though the presence of claimed features can be assessed in shades of grey. To the contrary, the reference either does or does not disclose a feature. Each claimed feature must be found in or rendered obvious over the Eryurek reference or the Sainen reference. It cannot be said that a feature is partially present in one reference and that the other reference provides the rest of the feature. There is no basis in the patent laws to reject a claim when the claimed feature is not found to the extent claimed.

Furthermore, neither of the references, alone or together, provide the claimed subject matter. As a first example, the rejection of claim 10 implies that because par [0014] of Eryurek discloses use of a microprocessor configured to receive a setpoint which can be stored in memory, this would satisfy the claim requirement for “recording the process variables during changing operating conditions ...” but no where in the cited paragraph is there disclosure of such. There is no disclosure of recording variables, and there is no disclosure of changing operating conditions. Further, the Sainen reference does not disclose these features either.

As a second example, claim 10 requires “determining a minimum control reserve of a plurality of control loops of the installation on the basis of the recorded process variables ...” and applicants inquire of the Examiner, where is there a citation of a “minimum control reserve” and where are the “recorded” process variables? The rejection cites par [0009] of Eryurek, but neither of the foregoing features are disclosed therein. Disclosure of control information (e.g., in the context of controlling quality of a process) is not the same as determining a minimum control reserve. Nothing in the Sainen reference compensates for these deficiencies. Furthermore, argument in the rejection that the Sainen reference determines actions that increase the capacity

of a system based on calculated parameters is not the same as determining the capacity. It is only the applicants who teach the concept of "determining a minimum control reserve of a plurality of control loops ..." Furthermore, the rejection fails to provide any citation for argument at page 4 of the office action that a loom is controlled based on data representing capacity by raising the operating speed only when at least one control parameter has allowance. The examiner must disclose that text which is construed to provide such disclosure. Notwithstanding such argument, there is still no disclosure of a minimum control reserve.

Conclusion

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, Applicants respectfully request that the Examiner remove the rejections and timely pass the application to allowance. All correspondence should continue to be directed to our below-listed address. Please grant any extensions of time required to enter this paper. The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including fees for additional claims and terminal disclaimer fee, or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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By: Janet D. Hood

Janet D. Hood
Registration No. 61,142
(407) 736-6449

Siemens Corporation
Intellectual Property Department
170 Wood Avenue South
Iselin, New Jersey 08830